LIBRARY
SUPREME COURT, U. S.

FILED
OCT 18 197
MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-448

AL A. MARTH, as Trustee in Bankruptcy of Pete Horner Excavating, Inc., an Arizona Corporation,

Petitioner.

v.

MARTHA MAYTAG DANNERBECK, and OSCAR C. PALMER, Sr., and CORINNE E. PALMER, his wife,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

HUGHES & HUGHES, P.C.
By John C. Hughes
411 North Central Avenue
Phoenix, Arizona 85004
(602) 252-8001
Attorneys for Petitioner

IN THE

Supreme Court of the United States

October Term, 1974

No.

AL A. MARTH, as Trustee in Bankruptcy of Pete Horner Excavating, Inc., an Arizona Corporation,

Petitioner.

v.

MARTHA MAYTAG DANNERBECK, and OSCAR C. PALMER, Sr., and CORINNE E. PALMER, his wife,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES CITED	ii
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	2
JURISDICTION	2
STATUTES AND RULES	2
QUESTIONS PRESENTED	2
STATEMENT OF THE CASE	3
ARGUMENT	10
Jurisdiction	11
Bankruptcy Jurisdiction	13
The Equitable Right of Subrogation	16
The Palmers	20
CONCLUSION	21
APPENDIX:	
Opinion of the District Court	1a
Opinion of the Court of Appeals for the Ninth Circuit	10a

TABLE OF AUTHORITIES CITED

Cases: *Page*

Alexander v. Thielman,
69 F.2d 610 16

Bankman v. Sanford,
162 F.2d 592, *cert. denied*, 68 S. Ct. 155,
332 U.S. 816, 92 L. Ed. 393 11

Blaine v. Blaine,
159 P.2d 786, 63 Ariz. 100 18

Braddy v. Randolph,
352 F.2d 81 16,18,20

California v. Larue,
93 S. Ct. 390, 409 U.S. 109, 34 L. Ed. 2d 342,
Rehearing denied, 93 S. Ct. 1351, 410 U.S. 948,
35 L. Ed. 2d 615 11

Carpenter v. Longan,
83 U.S. 278 19

Cline v. Kaplan,
65 S. Ct. 155, 323 U.S. 97, 89 L. Ed. 97 13

DeMet v. Harralson,
399 F.2d 35 (5th Cir. 1968) 16

Emland Builders, Inc. v. Shea,
(10th Cir.), 359 F.2d 927 12

Geddes v. Anaconda Copper Mining Co.,
254 U.S. 590, 41 S. Ct. 209, 65 L. Ed. 425 16

Gorovitz v. Balkan,
96 F. Supp. 747 12

Henningsen v. U.S. Fidelity and Guaranty Co.,
208 U.S. 404 (1908) 13

Hopper v. American National Bank of Cheyenne,
Wyoming, 309 F.2d 35 (10th Cir. 1962) 16

In Re Community Neighbors, Inc.,
287 F.2d 572 (7th Cir. 1961) 15

In the matter of Tax Services Association of Illinois,
(Harris v. Avery Brundage Co.) 305 U.S. 160,
38 Am. B.R. (N.S.) 85, 59 S. Ct. 131,
83 L. Ed. 100 13

TABLE OF AUTHORITIES CITED

Cases: (Cont'd) *Page*

In Re Patrick,
194 F.2d 750 (7th Cir. 1962) 13

In re Trimble Company,
479 F.2d 103 (3rd Cir. 1973) 16

Iselin v. LaCosta,
141 F.2d 791 11

Katchen v. Landy,
382 U.S. 323, 86 S. Ct. 467, 12 L. Ed. 2d 391 14

Magnum v. Coty,
262 U.S. 159 21

Manufacturers Trust Co. v. Beaker,
338 U.S. 304, 70 S. Ct. 127, 94 L. Ed. 197 16

Marks v. Brucker,
434 F.2d 897 (9th Cir. 1972) 15

Master v. Spencer,
(C.C.A. 8th Cir.) 29 Am. B. R. 246, 203 Fed. 210 . 15

National Savings v. Cresswell,
100 U.S. 630 (1879) 19

Pearlman v. Reliance Insurance Co.,
371 U.S. 132 (1962) 13,15,16,20

Pepper v. Litton,
308 U.S. 295, 60 S. Ct. 238, 84 L. Ed. 281 13,14,16,19

Prairie State Bank v. U.S.,
164 U.S. 227 13

Rabinovitz v. Oughton,
92 F.2d 297, *cert. denied*, 58 S. Ct. 746,
303 U.S. 649, 82 L. Ed. 1110 20

Reifsnyder v. Levy and Son,
(3rd Cir.) 88 F.2d 287, *cert. denied*, 301 U.S. 696,
57 S. Ct. 926, 81 L. Ed. 1351 15

Rockmore v. New Jersey Fidelity and Plate Glass
Company, (C.C.A. 2nd Cir.) 23 Am. B.R. (N.S.) 282,
65 F.2d 341 12

TABLE OF AUTHORITIES CITED

Cases: (Cont'd) *Page*

Southern Pacific Co. v. Bogert,
250 U.S. 483, 39 S. Ct. 533, 68 L. Ed. 1099 16

Taubel - Scott - Kitzmiller Co., Inc. v. Fox,
264 U.S. 426, 2 Am. B.R. (N.S.) 912,
44 S. Ct. 396, 68 L. Ed. 770 13

Twin Lick Oil Company v. Marking,
91 U.S. 587, 23 L. Ed. 328 16

Wood v. Steele,
73 U.S. 80 (1867) 19

Statutes:

28 U.S.C. 1254 (1) 2

28 U.S.C. 1332 2,11

Other:

3 Collier on Bankruptcy , 14th Ed. 57.17 15

Collier Bankruptcy Manual, 2nd Ed. §23.09 12

Constitution,
Article 3, Section 2 2,11

IN THE

Supreme Court of the United States

October Term, 1974

No.

AL A. MARTH, as Trustee in Bankruptcy of Pete Horner Excavating, Inc., an Arizona Corporation,

Petitioner.

v.

MARTHA MAYTAG DANNERBECK, and OSCAR C. PALMER, Sr., and CORINNE E. PALMER, his wife,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

The petitioner, Al A. Marth, as Trustee in Bankruptcy of Pete Horner Excavating, Inc., an Arizona corporation, respectfully prays that a Writ of Certiorari issue to review the decision of the Court of Appeals for the Ninth Circuit filed July 17, 1974, reharding denied August 12, 1974.